

Applicant: JOHNSON *et al.*
Serial No: 09/667,693
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REMARKS

In response to the Non-Final Office Action mailed **December 10, 2012** (hereinafter “Office Action”), no claims have been amended, cancelled, or newly added. However, because this is a REISSUE application, pursuant to **MPEP § 1453(IV)**, the claims have been presented relative to the patent specification in effect as of the date of the filing of the Reissue application, and not relative to the prior amendment. Claims 1, 2, 4-7, and 9 remain pending. In view of the following comments, allowance of all the claims pending in the application is respectfully requested.

37 C.F.R. § 1.173(c) STATEMENT

A. STATUS OF THE CLAIMS

Claims 1, 2, 4-7, and 9 are pending in the application.

Claims 3, 8, and 10-20 are cancelled.

More particularly:

- claims 1, 2, 7, and 9 of U.S. Patent No. 5,812,249 have each been (*previously*) twice amended;
- claim 5 of U.S. Patent No. 5,812,249 has been (*previously*) amended one time;
- claims 3 and 8 of U.S. Patent No. 5,812,249 were *previously* cancelled; and
- claims 10-20, which were newly added in the Preliminary Amendment filed on September 22, 2000, were *previously* cancelled.

B. DESCRIPTION OF (AND SUPPORT FOR) CLAIM CHANGES

By this Amendment, no claims have been amended, cancelled, or newly added.

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REJECTIONS UNDER 35 U.S.C. § 251

Claims 1, 2, 4-7, and 9 stand rejected under 35 U.S.C. § 251 as allegedly being based upon a defective reissue oath/declaration.

A. The Examiner first alleges that “...the declaration filed 10/16/2012 does not specifically list all amendments filed subsequent the original oath” [Office Action, pg. 2].

The Examiner then erroneously alleges that:

[T]he dates of every amendment filed subsequent to the original oath/declaration comprise: 1/22/2008; 5/5/2009; 11/16/2010; 6/24/2011; 1/13/2012; 2/22/2012; and 10/16/2012.

[Office Action, pg. 2].

The foregoing statement is not accurate.

The CLAIMS have ONLY been amended in the instant REISSUE application in the following four amendments:

- (1) September 22, 2000;
- (2) January 22, 2008;
- (3) May 5, 2009; and
- (4) November 16, 2010.

These four dates were identified in the 10/16/12 Declaration.

No claims were amended in the Responses filed on June 24, 2011, January 13, 2012, February 22, 2012, or October 16, 2012. Further, no claims have been amended by this Response. However, the claims have always been presented in these Responses with the amendments depicted, because this is a REISSUE application. Pursuant to **MPEP § 1453(IV)**, the claims must always be presented relative to the patent specification in effect as of the date of the filing of the Reissue application, and not relative to the prior amendment.

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For at least the foregoing reasons, this portion of the rejection under 35 U.S.C. § 251 is improper and should be withdrawn.

B. The Examiner further alleges that the “error statement is not specific enough” and suggests that the language of the prior declaration further include the additional recitation of “...was not needed for patentability” [Office Action, pg. 3].

Although there is no legal basis for this requirement, a Supplemental Reissue Declaration is being provided herewith solely in an effort to expedite prosecution.

In view of the foregoing, withdrawal of the rejection of claims 1, 2, 4-7, and 9 under 35 U.S.C. § 251 is earnestly sought.

CONCLUSION

Having addressed each of the foregoing rejections, it is respectfully submitted that a full and complete response has been made to the outstanding Office Action and, as such, the application is in condition for allowance. Notice to that effect is respectfully requested.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Respectfully submitted,

Date: April 10, 2013

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